

No. \_\_\_\_\_

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**In The  
Supreme Court of the United States**

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JAIRUS COLLINS,

*Petitioner,*

v.

BURL CAIN, COMMISSIONER,  
MISSISSIPPI DEPARTMENT OF CORRECTIONS;  
LYNN FITCH, MISSISSIPPI ATTORNEY GENERAL,

*Respondents.*

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**On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Fifth Circuit**

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**PETITION FOR WRIT OF CERTIORARI**

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**QUESTION PRESENTED**

Whether the United States Court of Appeals for the Fifth Circuit erred in denying a Certificate of Appealability to the following issue: Whether Miss. Code Section 99-17-1 which requires Mississippi criminal cases to be tried "no later than two hundred seventy (270) days after the accused has been arraigned," unless good cause can be shown for a continuance duly granted by the Court, has been modified by Mississippi Court so said statute, as modified, contradicts clearly established decisions of the United States Supreme Court.

## **PARTIES TO THE PROCEEDING**

A list of all parties to the proceeding in the court whose judgment is the subject of the petition is as follows:

*Plaintiff-Appellant and Petitioner:* Jairus Collins.

*Defendant-Appellees and Respondents:* Burl Cain, Commissioner, Mississippi Department of Corrections; Lynn Fitch, in her official capacity as Attorney General of the State of Mississippi.

## **RELATED CASES**

*Collins v. State*, No. 2016-KA-00422 – COA, decided May 23, 2017. Conviction affirmed (reported at 232 So. 3d 739) (Miss. Ct. App. 2017).

*Collins v. Commissioner, Mississippi Department of Corrections*. U.S. District Court for the Southern District of Miss., Eastern Division. Judgment entered September 22, 2021.

*Collins v. Burl Cain*, U.S. Court of Appeals for the Fifth Circuit (No. 21-60751). Order Denying Certificate of Appealability entered February 28, 2022.

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**PETITION FOR WRIT OF CERTIORARI**

Jairus Collins, Plaintiff below and Petitioner, respectfully petitions for writ of certiorari to review the opinion and judgment of the U.S. Court of Appeals for the Fifth Circuit.

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**OPINIONS BELOW**

The Order by Corey T. Wilson, United States Circuit Judge on behalf of the United States Court of Appeals for the Fifth Circuit, dated February 28, 2022. No. 21-60751. App. 1.

The Order Adopting Report and Recommendation and Dismissing Petition for Writ of Habeas Corpus and Final Judgment of the United States District Court for the Southern District of Mississippi, both dated September 22, 2021. App. 4.

The Report and Recommendation of the U.S. Magistrate Judge dated August 3, 2021. App. 13.

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**JURISDICTION**

The judgment of the U.S. Court of Appeals for the Fifth Circuit sought to be reviewed was entered on March 22, 2022. The petition is timely under 28 U.S.C. §2102(c) and Supreme Court Rules 13.1 & 13.3 because it is being filed within 90 days after the decision and judgment of the Court of Appeals. This Court has jurisdiction to review the judgment of the U.S. Court of

Appeals for the Fifth Circuit pursuant to 28 U.S.C. §1254(1).

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**CONSTITUTIONAL PROVISIONS INVOLVED**

I. Amendment V of the U.S. Constitution which provides as follows:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a grand jury, except in cases arising in the land or naval forces or in the militia, when in actual service in time of war or public danger; nor should any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation."

II. Amendment VI of the U.S. Constitution provides as follows:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining

witnesses in his favor, and to have the assistance of counsel to his defense.”

III. Amendment XIV Section 1 of the U.S. Constitution provides as follows:

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction equal protection of the laws.”

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### STATEMENT OF THE CASE

Petitioner was convicted of Possession of Weapon by Convicted Felon on February 25, 2016 in the Forrest County Circuit Court.

Prior to Petitioner's trial, he filed a Motion to Dismiss on the grounds that his prosecution violated his right to a speedy trial under Section 99-17-1 of the Mississippi Code of 1972, which requires that a defendant be tried two hundred seventy (270) days after defendant has been arraigned, and also violated his Constitutional right to a speedy trial under the factors set forth by the United States Supreme Court in *Barker v. Wingo*, 407 U.S. 514 (1972).

Petitioner's conviction was affirmed by the Mississippi Court of Appeals.

Petitioner's Writ of Certiorari to the Mississippi Supreme Court was denied. His Application for Post-Conviction Relief, or in the Alternative, Leave to File Motion to Vacate Judgment and Sentence in the Circuit Court was denied on February 15, 2018.

Mr. Collins filed Petition Under 28 U.S.C. §2254 for Writ of Habeas Corpus by a Person in State Custody on March 27, 2018. Report and Recommendation by United States Magistrate Judge Robert P. Myers, Jr. was filed on August 3, 2021, recommending that the District Court deny Jairus Collins' Petition for Writ of Habeas Corpus. Petitioner filed Objection to Report and Recommendation as to Ground I of Petition on August 9, 2021. The District Court entered its Order Adopting Report and Recommendation and Dismissing Petition for Writ of Habeas Corpus on September 22, 2021. The District Court entered its Final Judgment on September 22, 2021. The Certificate of Appealability – Denied.

Petitioner filed his Notice of Appeal on September 27, 2021 and in an Order dated February 28, 2022, the United States Court of Appeals for the Fifth Circuit denied Petitioner's Application for Certificate of Appealability.



## REASONS FOR GRANTING THE PETITION

### A. MISSISSIPPI'S SPEEDY TRIAL STATUTE IS UNCONSTITUTIONAL AS APPLIED.

§99-17-1 of the Mississippi Code of 1972, as amended, provides as follows:

"Unless good cause can be shown, and a continuance duly granted by the court, all offenses for which indictments are presented to the court shall be tried no later than two hundred seventy (270) days after the accused has been arraigned."

Since the Mississippi Supreme Court's decision in *Walton v. State*, 678 So. 2d 645 (Miss. 1996), in applying §99-17-1, the Mississippi courts have required that the defendant assert his/her right to a speedy trial and show that the delay in question has prejudiced the accused's right to defend himself.

The factors added to §99-17-1 are taken directly from the United States Supreme Court's decision in *Barker v. Wingo*, 407 U.S. 514 (1972). In *Barker*, the United States Supreme Court identified four (4) factors: (a) the length of delay; (b) the reason for the delay; (c) the accused's assertion of his/her right to a speedy trial; and (d) any prejudice to the accused.

Under *Barker v. Wingo*, no one factor is necessary or sufficient in order to find or not find a deprivation of the right of speedy trial. However, the Mississippi courts have treated the defendant's responsibility to assert his/her right to a speedy trial and the prejudice



factor, each standing alone, as sufficient grounds to deny a speedy trial claim. The Mississippi appellate courts, as they did in this case, are not applying a balancing test but a test in which prejudice and asserting the right to a speedy trial are each a disqualifying element. In essence, the Mississippi courts have lifted the asserting the right to trial and prejudice from *Barker* but have gone beyond the United States Supreme Court's decision in *Barker* and treated each element as a disqualifying factor. The Mississippi appellate courts are not applying a balancing test but a test in which a defendant must establish each essential element or be disqualified. Mississippi appellate courts are applying §99-17-1 in a manner that violates the 6th Amendment rights of Petitioner as well as others in his circumstance.

*Walton* has had a profound impact on speedy trial litigation in Mississippi. See *Anderson v. State*, 874 So. 2d 1000, 1009 (Miss. Ct. App. 2004); *Alexander v. State*, 841 So. 2d 1138, 1148 (Miss. Ct. App. 2002); *Byrd v. State*, 741 So. 2d 1028, 1030, 1033 (Miss. Ct. App. 1999); *Biggs v. State*, 741 So. 2d 318, 327 (Miss. Ct. App. 1999). In *Biggs*, the Mississippi Court of Appeals stated as follows:

“To the contrary, the supreme court in a case that may signal a new factor to be considered in statutory speedy trial allegations, has held that the entire statutory right may be waived by failure to demand a speedy trial during the 270-day time period. *Walton v. State*, 678 So.2d 645, 650 (Miss.1996).”

Given *Walton* and its progeny, Collins' Petition for Habeas Corpus is consistent with the analysis set forth by the United States Supreme Court in *Williams v. Taylor*, 529 U.S. 362, 120 S.Ct. 1495, 146 L.Ed. 2d 389 (2000). Under *Williams v. Taylor*, a State court's decision involves an unreasonable application of federal law if it identifies the correct governing principle, but unreasonably applies the principle to the facts of a prisoner's case. This application of law to facts must be objectionably unreasonable. See *Williams v. Taylor*, 120 S.Ct. at 1508-1509. Here, the State courts' have applied the correct governing principle, i.e., Jairus Collins was entitled to a speedy trial. However, the Mississippi courts' application of law to facts is objectively unreasonable.

A long line of United States Supreme Court cases has established that when a State criminal statute or decision, whether it involves procedural or substantive issues, denies a criminal defendant a constitutional right, such as the right to a speedy trial guaranteed by the 6th Amendment of the United States Constitution, that defendant's conviction must be reversed and set aside.

In *Chambers v. Mississippi*, 410 U.S. 284, 93 S.Ct. 1038, 35 L.Ed. 297 (1973), the United States Supreme Court reversed defendant's conviction. The Court held that the exclusion, under state hearsay rules of exculpatory testimony of another party having committed the crime, which under the circumstances was likely to be trustworthy, and within the rationale of the exception for declaration of penal interest, coupled with the

State's refusal to allow a defendant to cross-examine a key witness because of a common-law rule that a party may not impeach its own witness, denied the defendant a trial in accord with fundamental standards of due process.

In *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed. 2d 1081 (1961) the United States Supreme Court reversed the judgment of the Supreme Court of Ohio and held that the Due Process Clause of the 14th Amendment extended to the States the 4th Amendment right against unreasonable searches and seizure. The Court further found that to insure that right, the exclusionary rule, which prohibited the introduction into evidence of material seized in violation of the 4th Amendment, likewise applied to the State's prosecution of State crimes.

In *Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed. 799 (1963) the United States Supreme Court held as unconstitutional Florida's law that only allowed appointment of counsel in capital offenses. The court held that under the 6th Amendment, Mr. Gideon, a criminal defendant, was entitled to the appointment of counsel, although he was not charged with a capital offense.

In *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed. 2d 177 (2004), the United States Supreme Court reversed the judgment by the Washington appellate court upholding defendant's conviction. The court found that prior statements such as those during interrogations by law enforcement were testimonial in

nature and defendant had a right to confront through cross-examination the person or persons who gave such prior testimonial statements. The court found that the right to confrontation was a procedural guarantee that required that prior testimonial statements be tested by cross-examination.

In *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d 694 (1966), the United States Supreme Court reversed the judgment from the Supreme Court of Arizona and three other similar State cases, and found that when an individual is taken into custody and subjected to questioning, the privilege against self-incrimination under the 5th Amendment of the United States Constitution is violated if the defendant is not warned before questioning that he has the right to remain silent, and that anything he says can be used against him in a court of law. He is also required to be told that he has the right to the presence of an attorney, and if he cannot afford an attorney one has to be appointed for him prior to any questioning if he so desires. After these warnings are given, a defendant can knowingly and intelligently waive these rights and agree to answer questions or make a statement. However, evidence obtained without a waiver, given knowingly and intelligently, must be excluded.

In this case, the above-described treatment of defendant's right to a speedy trial under the 6th Amendment falls in line with the cases of the United States Supreme Court cited above.

Based on this analysis, either the District Court or the Fifth Circuit Court of Appeals should have granted a Certificate of Appealability as to the following issue:

Whether Mississippi Code §99-17-1 which requires Mississippi criminal cases to be tried "no later than two hundred seventy (270) days after the accused has been arraigned," unless good cause can be shown for a continuance duly granted by the court, has been modified by Mississippi courts so said statute, as modified contradicts clearly established decisions of the United States Supreme Court.

Inherent in the issue for which Mr. Collins sought a Certificate of Appealability is the fundamental question whether or not a State may impose more rigorous speedy trial requirements than those set forth in *Barker v. Wingo*.

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**CONCLUSION**

For the reasons set forth above, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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